

**Review of**

**"Evaluation of the Ownership of Maine's Power Delivery System"  
by London Economics International LLC, February 15, 2020**

**Gordon L. Weil, Ph.D.**

**February 23, 2020**

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*Executive Summary*

*This review examines the LEI Report on the proposed Maine Power Delivery Authority (MPDA).*

*While the Report provides some useful insights, it is not a useful tool in decision-making on the proposal, now ripe for action based on already well-established facts, because it is purely theoretical and omits matters or errs on key items:*

*1. Current failures of system reliability and a review of the reliability of other utilities in Maine and elsewhere;*

*2. Major capital requirements for meeting greenhouse gas emissions goals (green power) and potentially large savings from MPDA financing;*

*3. Focus on the acquisition premium that produces an excessively high result, because it does not take account of the MPDA capital structure and the opportunity temporarily provided by the reduced differential between taxable and non-taxable interest rates;*

*4. Misunderstanding the role of the contractor, which would serve as operator but not as manager; and*

*5. Failure to recognize the potential revenues for a consumer-owned utility's customers from the federal rules that would apply to MPDA as a public power transmission owner.*

*The net effect of the report is to underestimate the current and future financial benefits to Maine customers and the potential for greater system reliability under competent management responsive to Maine customers as opposed to foreign owners.*

## **I. General**

### **a. Purpose of report**

On February 15, 2020, London Economics International (LEI) submitted a report intended to evaluate:

"the short- and long-term costs and benefits of the proposal as presented in LD 1646;

the legal, regulatory, technical, financial and operational issues related to the LD 1646 proposal and its implementation;

the anticipated impacts of electricity rates, utility employees and ratepayers; and

alternatives or amendments to the LD 1646 proposal to address any identified obstacles to its implementation."

### **b. LEI Approach**

The LEI report is a limited, theoretical analysis of the cost impact of the Maine Power Delivery Authority (MPDA) proposed in LD 1646. It reviews much already available information and focuses on:

- Range of acquisition premiums
- Management contractor costs
- Additional questions to be considered.

Its methodology does not include information from the experience of the two utilities in question or other investor owned utilities (IOU) or consumer owned utilities (COU), State policies on green power, or federal regulation. Its product is a range of cost projections resulting from the assumptions in its analysis.

The LEI report does not consider:

- System reliability
- Effect of substituting customer control for investor interests
- Experience of COUs
- Capital requirements to achieve green power in line with State policy
- Current management problems underlying negative customer rating of utilities
- Effect of current rate environment on cost of capital for acquisition
- Benefits from federal regulation of COU transmission.

### **c. LEI considerations**

In its introduction, LEI states "certain factors may or may not be included in the analysis." It is "not intended to be a complete and exhaustive analysis." It suggests that "further appropriate inquiries as to the accuracy of information." It also states that it offers "no promise or guarantee of future events."

These observations risk being overlooked by a person seeking to read into the findings any conclusions about the wisdom of the MPDA proposal.

The purpose of this review is to provide supplementary observations of the MPDA to correct or amplify the LEI report.

### **d. Why MPDA?**

There are three underlying causes for the interest in replacing Central Maine Power (CMP) and Emera Maine (Emera) with the MPDA.

1. System reliability is at a low level, reportedly placing Maine last among all states in reliable service;

2. Management competence is questionable given CMP's failure to manage the transition to a new billing system and to capture the benefits of new metering, plus its failure to maintain its lines. Emera has failed to develop its transmission system properly, resulting in massive cost increases without improved reliability; and

3. High rates resulting from the efforts of foreign owners to maximize profits by seeking increased customer revenues while reducing line and other operations. In addition, profit-making entities can be expected to cause higher customer costs as Maine investment to support green power increases.

The LEI report does not deal with any of these causes. Its focus is on the cost/benefit financial impact of the MPDA. It acknowledges that its analysis depends on its assumptions and that others may have alternate assumptions.

## **II. Specific issues**

### **a. Effect on customers**

The LEI report findings relate to customer costs at several points and they will be discussed where appropriate.

But the main finding is that customer costs will increase initially and thereafter be less than they otherwise would have been. The reason for the initial increase will be payments for a premium above the net book value of the assets. The amount of this premium will be the result of negotiations or litigation.

Pursuant to federal law, it is likely that the debt to be used by the MPDA to acquire the CMP and Emera facilities will be at taxable rates. All later capital borrowing will be at lower, tax-exempt rates.

The payment made by MPDA to CMP and Emera facilities will be their net book value plus an acquisition premium and would be financed entirely by taxable debt. The premium would reflect the market value of the utilities, essentially the lost opportunity cost to their shareholders.

The gap between taxable and tax-exempt utility debt is now unusually small. The timing is thus good for the acquisition, because the added debt service cost is less than it might normally be. The MPDA debt service would (i) offset the current cost of debt in the CMP and Emera capital structures, but (ii) also replace their return on equity. The interest on debt, even at taxable rates, would be less than the return on equity. The result is that the added cost resulting from the premium, a core element of the LEI analysis, is unknown, but might be relatively small. Consequently, its effect on rates is unknown.

As for other capital spending apart from acquisition, financed henceforth by tax-exempt debt, LEI assumes a "status quo scenario." In other words, new capital spending each year would only take place at the current pace. This assumption ignores developments in Maine energy plans, which will require major, new capital investment.

The state is moving on a plan to achieve full green power in 30 years. That will require massive new spending on utility capital projects. Dr. Richard Silkman has produced for the State an estimate of the new costs. I have prepared a supplement to his calculations (Appendix A) showing billions of dollars in lower costs through a COU rather than continuing with the capital structure of the investor-owned utilities (IOUs). LEI completely ignores this advantage for customer costs, which would produce far greater benefit to customers than it shows.

## **b. Reliability**

The reliability of the distribution system has declined to a disastrous point. Data from the U.S. Department of Energy, Energy Information Administration (EIA), shows that the level of reliable delivery services is lowest in Maine among all 50 states.

The LEI report does not address reliability on the grounds that improved reliability would not be "guaranteed" by the MPDA. This conclusion is irresponsible. If, say, the State reduces income tax rates, the effect on revenue is not "guaranteed," but past history informs us that, absent any other development, state revenues will decline. Virtually no legislation produces a "guaranteed" result.

One of the chief failings of LEI's approach is that it does not consider the experience of any other utilities. While no two utilities are identical, broad findings are possible. In general, COUs provide more reliable service than IOUs. That may result from COUs having an obligation only to their customers, while IOUs have an incentive to reduce spending on operations to enhance shareholder gains.

Maine COUs (Houlton, Kennebunk, Madison and Eastern Maine Coop) as a group outperform CMP and Emera. Nebraska with only COUs ranks near the top nationally. While the utilities may claim that Nebraska benefits from having fewer trees than Maine, the utilities here have had a century to cope with the effect of trees on reliability.

In the face of repeated proposals I have made over many years, CMP and Emera refused to install distribution lines that are protected from vegetation contact and have more resistance to fallen trees. These lines reduce storm-related outages and the need for expensive emergency action. Only recently have the utilities tentatively conceded that "tree wire" might reduce outages. Thus, management incompetence and the desire to maximize profits have led to reduced reliability. But LEI did not look at this matter.

### **c. Management and staffing**

One element of added customer cost foreseen by LEI is the surcharge of a hired management team hired by the MPDA Board. In this observation, LEI misunderstands the MPDA proposal.

The MPDA Board would hire management as permanent staff. These managers would displace the officials now employed by CMP and Emera. There is no reason to believe that such leadership personnel would be compensated at levels higher than the pay and benefits of those they replace.

The cost could be reduced as the result of the economies of scale that could result from having a single management group replacing those of the two utilities. LEI suggests that the IOUs may now benefit from some of their management being provided by their ownership group, though this is purely a hypothesis without any support. In fact, the owners may cut local management to the detriment of customers without adequately replacing it with corporate managers.

The MDPA would hire, through a public bid process, a company to provide operating, not management, services. The contractor would report to the MPDA management. The responsibilities would be put out to bid periodically as a way to promote efficiency and keep costs under control. Here is a similar format: a Town Manager or Road Commissioner, appointed by town officers, hires a company to plow the town's roads. From time to time, the work is put out to bid.

As a result of its misunderstanding, LEI projects added costs that would not occur.

LEI raised a valid public policy question. The MPDA proposal calls for retention of the current operating personnel, now working under collective bargaining agreements. The intent was not to disturb existing employment relationships, making a transition easier. As LEI notes, without this condition, operating costs might be lower. This is clearly a matter that goes beyond simple cost considerations.

#### **d. Governance and customer control**

The MDPA is to be a COU, not a State agency. Like the Maine Turnpike Authority (MTA), it is not meant to receive any public funding. In this respect, it should not differ from Maine's existing COUs.

LD 1646 provides for the Board to be appointed by State officials, as is the MTA. On reflection, I discussed with LEI a revised proposal for the direct election of Board members by the customers. LEI takes the position that this approach would be more consistent with the nature of MPDA.

Such election can take place with little cost and little complexity. Currently, corporate shareholders are sent ballots, and they can vote either by phone or online. Each customer could receive a ballot with their bill and vote in the same way. Each bill-paying customer would have the same vote.

The history of COU elections in Maine shows that there may be contests for office. The COU system makes for effective control by those the utility serves. If reliability falters, customers can elect new Board members. In contrast, the MPUC regulates after the fact and may fine the utility but lacks the kind of control that COU customers have. Distribution utilities are monopolies, which can be controlled best by their customers, not government.

#### **e. Transmission and federal regulation**

The report treats the MPDA as if it would essentially be in the same position as CMP and Emera. In this, the report significantly errs and misses significant consumer benefit.

First, the Federal Power Act does not apply in most respects to COUs (public power). As a result, a COU is only under the jurisdiction of the Federal Energy Regulatory Commission (FERC) if it opts to accept that jurisdiction. It would not be required to join ISO-NE, though it is likely it would.

Second, LEI focuses on the ISO-NE single tariff. It is true that all transmission providers receive their cost of service from the region, meaning that all providers contribute to the funding. In effect, a Maine utility pays a limited amount into the regional account to support other systems, and it receives its full costs from others as well as its own customers.

But the key element of this relationship is the cost of service. Each provider establishes its own rate to be charged to the region, its sole customer. The rate is based on its costs of debt and a relatively high return on equity (ROE). The high ROE is offered as an incentive to providers to build new transmission to serve the expanding renewable resources.

A COU provider has no ROE. But under FERC rules and decisions, it is entitled to an economic incentive to build transmission. (See FERC Docket No. RM06-4-000 Order 679 and following orders in cases.) Thus, the MPDA, as part of the terms and conditions of joining the regional system, could seek agreement on its incentive adder. Because the revenue from the adder would be above what is needed to finance its transmission costs, its gain from regional participation could flow back to its owners – the customers. Because its

incentive might include lower interest on debt (less of an adder than corporate ROE), it would also contribute to a reduction in the regional transmission rate.

These considerations, an offset to other customer costs, are entirely absent from the LEI report.

As for federal jurisdiction, CMP and Emera are under federal jurisdiction. The disposal of their property, probably even as the result of state action, requires FERC approval. However, there is little reason to anticipate any significant problems.

#### **f. Taxation**

CMP and Emera are both taxpayers – federal, state and local. LEI points out that the MPDA, as a COU, would not be a taxpayer and the lost revenues would be a cost that might have to be made up by taxpayers.

At the federal level, the requirement that the acquisition be made using taxable debt is partial compensation. Federal tax policy has long been designed to encourage public power, though much of its financing now takes the form of taxable debt. The federal tax effect of public power is small.

It must be noted that IOUs have developed ways of avoiding much of their federal tax obligation. While they may collect from customers funds sufficient to cover federal taxes, they often pay less than the tax obligations funded by customers. That, too, suggests the federal revenue loss will be slight.

At the state level, the contribution from IOUs is small (partly because revenues from corporate income are relatively small), though LEI did not inquire into the actual effect. The collection of the State sales tax on utilities requires additional consideration.

At the local level, the intent of the original draft was completely to immunize municipalities. The original form of the bill was distorted in legislative processing. It needs to be redrafted back to its original form, which guarantees to municipalities all of the property tax revenues they would have received from the IOUs. The State sets the rate.

#### **g. Regulation**

LEI suggests that consideration be given to regulating MPDA just as are the IOUs. The bill specifically provides for several cases in which the MPUC would regulate the MPDA like an IOU rather than as a COU. As it is, Maine regulates COUs far more than most other states.

To treat the MPDA completely as an IOU would greatly undermine customer control. This is unjustified by the record. Maine COUs can set their own rates with their boards serving as regulator. They have had far fewer and far smaller rate increases than the IOUs. Excessive rate increases could be appealed to the MPUC.



The MPUC would have the same obligation as the COU board itself, because only customers would be affected. There is no basis for assuming that regulators would do a better job than an elected board.

### **III. Procedure**

#### **a. Decision**

The first order of events should be the decision to create the MPDA for the purpose of acquiring CMP and Emera operating property.

Such action would preclude the use of negotiations or litigation about compensation as a way of derailing the acquisition. There can be little doubt that the IOUs will try to maximize their buyout and delay the process, while they continue to operate. The authorizing legislation should (a) commit the MPDA to a minimum price, the net book value, and (b) set a deadline for negotiations before litigation. It should also do whatever is possible to ensure that acquisition cannot be unduly delayed.

The original draft should be modified for clarity, to correct errors and for brevity. I have drafted a revision of the bill, which I have provided to the EUT (Attachment B).

The bill may be adopted by a majority vote of the Legislature with the agreement of the governor. Alternatively, the bill could be sent to the voters for their decision. A final alternative would be voter initiative and referendum.

#### **b. MPUC role in approval**

LEI suggests that consideration should be given whether to ask the MPUC to review the proposal for the issuance of a certificate of public convenience and necessity. In this suggestion, LEI seriously errs in its understanding of state government.

The Legislature and the people make the laws and do not need review or approval by an agency of state government that exercises delegated legislative functions. Action by the ultimate lawmaker eliminates the needs for any review by a subordinate agency. Of course, the Legislature may request the advice of the MPUC, but no regulatory review or approval would be appropriate.

#### **c. Legislative control of the process**

LEI suggests that the question of compensation should be decided before the MPDA begins utility operations. Given the cost implications of the compensation issue, the LEI proposal makes sense.

By virtue of a positive decision on the creation of the MPDA, the determination of an acquisition payment, either through negotiation or litigation would have to take place. The process would be handled by the initial MPDA Board. It would operate under the directives of the Legislature, which would have a continuing role in the acquisition process.

Even the limited LEI report, to say nothing of other relevant data, indicates that COU management and operations of the CMP and Emera facilities would be in the interests of Maine customers. Thus, the time for decision is ripe.

Of course, there will be detailed work still to be done to complete the acquisition by the MPDA and the entry into operation of the COU. But this work can best be accomplished not as a series of obstacles to acquisition but as a series of decisions about the manner of operation of the new COU. The main decision would, as always, remain with the Legislature and governor. In the proposed process, they could be made in an orderly and constructive manner, consistent with the acquisition and "good utility practice," rather than as part of the threshold issue.

#### d. Additional studies

In Recommendation 8, LEI suggest three additional studies, apparently to be undertaken before action on the bill. These studies relate to (a) future capital needs, (b) taxation and (c) financing alternatives.

While these are serious considerations, (a) and (c) would be the responsibility of the Board. Future capital needs will reflect major public policy decisions to be made if green power is to be a possibility. Initial work has been done, but much of the added capital spending will rely on policies yet to be adopted. These policies may require higher rates, regardless of the form of utility ownership. In any case, they cannot possibly be known before action on the MDPA. Whatever the policy, a COU will be less costly than IOUs.

As for financing alternatives, the initial Board should undertake consideration of alternatives. It may avail itself of assistance from entities that would seek to finance its capital and launch requirements. Operating in a framework in which a decision had been made to proceed would enhance its ability to obtain useful assistance.

As for taxation, the bill itself should be explicit as to the Legislature's intent. It is already clear that property taxes would not be affected. Presumably, MDPA customers will be treated just as are other COU customers. Sales taxes paid by the MDPA may require legislative attention.

## **IV. Summary**

- LEI suggests that the MPDA Board should be elected by its customers.
- LEI suggests that acquisition costs be settled before operations begin.
- LEI suggests that state tax issues should be resolved.
- LEI notes the public policy choice in favor of employing current operating personnel.

- LEI acknowledges there is no constitutional or legal impediment to the acquisition.
- LEI overstates financing costs of acquisition, including the premium, in view of prevailing interest rates and MPDA's modified capital structure.
- LEI misunderstands management and operations staffing, producing an excessive cost estimate.
- LEI ignores federal transmission regulation that leads it to miss significant customer benefit.
- LEI entirely omits future green power capital needs, resulting in a major underestimation of savings from COU.
- LEI did not survey other utilities, resulting in virtually complete absence of consideration of system reliability.
- LEI does not address management competence.
- LEI calls for further studies, but they should be conducted by the MPDA Board.

My conclusion is that the cost effect of MPDA is far more positive than LEI finds. This results mainly from its failure to address many relevant factors for which information is available.

Much of LEI's attention is focused on the impact of the acquisition cost. Acquisition will be made as difficult as possible by CMP and Emera. That is the inevitable, one-time hurdle in creating public power. It is an appropriate focus but not to the point of disregarding many other considerations.

### **Reviewer**

The reviewer is Gordon L. Weil, Maine's first Public Advocate and Director of the Office of Energy Resources. He chaired the national organization of state energy agencies under the National Governors Association and the energy committee of the New England Governors and Eastern Canadian Premiers. He also chaired the New England negotiations that created the single regional transmission system and ISO-NE. He served as consultant to large electric customers, including consumer-owned utilities, in the U.S. and Canada and wrote a book on the American electric utility industry. He was a senior fellow of two Canadian think tanks. He is a graduate of Bowdoin College and has a Ph.D. from Columbia University.

In preparing this review, Dr. Weil is entirely independent of LEI, the Maine Public Utilities Commission (MPUC) and the Maine Legislature Joint Standing Committee on Energy, Utilities and Technology and its members.

## Appendix A

### Meeting Electric Delivery Service Cost Increases to Meet Goals in Silkman Paper

Gordon L. Weil

In his paper, Dr. Richard Silkman includes the following definition:

*Electricity Delivery Service Costs – These costs represent the revenue requirement of the electric utilities that provide electric service across the entire State of Maine. These costs grow in direct proportion to the expansion of the distribution and transmission grid necessary to support both beneficial electrification and the development of renewable generation resources. Electric Delivery Service costs are set at \$780 million in 2020 and 3.5 times that level, or \$2.8 billion, in 2050.*

This is the annual amount that will be paid by customers in their electric rates. Depending on when additions are made to T&D facilities, the amount can be expected to increase in each year. The amounts in the Silkman Report are expressed in dollars with today's purchasing power (constant dollars). Of course, actual costs will increase to reflect inflation and these are the dollars customers will pay in future years (current dollars). That will increase the 2050 amount to be collected in rates.

I have modeled the 30-year cost to customers with (1) investor-owned (IOU) T&D and (2) consumer-owned (COU) T&D utilities. In this exercise, certain considerations must be kept in mind.

1. The Silkman Report makes clear that the projections are meant to meet a test of being reasonable, though not necessarily probable. Thus, my analysis is similarly meant to be reasonable and accepts Silkman's own assumptions about reasonableness. In neither analysis can the reader find data that is finely honed and absolutely accurate.
2. The electric rate data is annual. The 2020 revenue requirement is \$780 million, while the 2050 revenue requirement is \$2.8 billion. The intervening annual costs are not stated and I have assumed that the increase is the same each year (adjusted for inflation in the current dollar case).
3. Silkman apparently uses today's utilities for the T&D costs. Thus, I consider his data to be for IOUs. The COU case is developed from it and uses the same O&M costs.
4. The annual inflation rate used in the current dollars case is 2 percent.
5. The differing capital structures (IOU = 50% equity and 50% taxable debt; COU = 100% tax exempt debt) have a major effect on the comparison. The IOU return on equity

is 10.5% and its long-term interest rate is 7%. The COU long-term interest rate is 5%. The IOU federal taxes are also included and recovered from customers.

6. All factors, such as the capital structure, allocation of the customer revenues and the interest rates, are derived from current utility information. Thus, they are not simply assumptions, but are based on actual practice or current policy.

7. Utility rates are derived from complex calculations that neither Silkman nor I reproduced. The exact rates are impossible to calculate definitively into the future. Silkman used his own methods to escalate the T&D rate requirement; I used a rough representation of how rates are developed, which was layered over his forecast.

8. Here is a tabulation of the results (in billion \$).

<u>Constant dollar case (Silkman Report)</u>		<u>Current dollar case</u>
Beginning cost	\$0.780	\$0.780
Ending cost	\$2.800	\$4.425
<b>IOU Cumulative cost</b>	\$16.771	\$22.613
<b>COU Cumulative cost</b>	\$10.739	\$14.479

**The saving in COU ownership of T&D as compared with IOU ownership over 30 years in constant dollars would be \$6.032 billion. In current dollars, which would be used in practice, the COU saving over the IOU would be \$8.134 billion.**

If we look at 2050 alone, the COU over IOU saving would be \$507 million.

9. The Silkman Report is based on the hypothesis of major revisions in human behavior, state policy and budgeting to achieve specific environmental goals. In the event these goals are not entirely pursued or achieved, the T&D costs would likely be lower. But a significant cost advantage for COUs over IOUs would remain.

## Appendix B.

### Proposed redraft of LD 1646 (Weil)

#### **An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §12004-G, sub-§36** is enacted to read:

**36.**

**Sec. 2. 35-A MRSA §3501, sub-§1, ¶¶D and E**, as amended by PL 1999, c. 398, Pt. A, §85 and affected by §§104 and 105, are further amended to read:

D. The portion of any municipal or quasi-municipal entity providing transmission and distribution services; ~~and~~

E. Any transmission and distribution utility wholly owned by a municipality; and

**Sec. 3. 35-A MRSA §3501, sub-§1, ¶F** is enacted to read:

F. The Maine Power Delivery Authority established in chapter 40.

**Sec. 4. 35-A MRSA c. 40** is enacted to read:

### **CHAPTER 40**

#### **MAINE POWER DELIVERY AUTHORITY**

##### **§ 4001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Authority.** "Authority" means the Maine Power Delivery Authority established in section 4002.

**2. Board.** "Board" means the Maine Power Delivery Authority Board established in Title 5, section 12004-G, subsection 36, including the initial board.~~36.~~

**3. Cost of service.** "Cost of service" means the total amount that must be collected by the authority to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.

**4. Customer-owner.** "Customer-owner" means a person to whom the authority provides electricity.

**5. Generating source.** "Generating source" means a machine or device that produces electric energy by any means.

**6. Plan.** "Plan" means the plan described in section 4003, subsection 1.

**7.6. Previous franchisee.** "Previous franchisee" means an individual or entity having any title or interest in any property, rights, easements or interests authorized to be acquired by the authority under this ~~chapter, specifically any investor-owned utility operating in the service area now or previously served by Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company.~~ ~~chapter.~~

**8.7. Utility facility.** "Utility facility" means an item of plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.

**9.8. Utility property.** "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in development or planning by the utility as of January 1, 2019; and, without limitation, the entire utility and any part or portion of the utility.

#### **§ 4002. Maine Power Delivery Authority established; board members**

The Maine Power Delivery Authority is established to provide for its customer-owners in this State reliable electric transmission and distribution services at the lowest possible cost in accordance with this chapter.

**1. Governance; board.** The authority is created as a body corporate and politic and a public instrumentality of the State and is governed by the Maine Power Delivery Authority Board in accordance with this section.

The initial board is composed of 10 members, appointed by the Governor and confirmed by the Legislature, all of whom must be residents of the State. The initial board must include persons with knowledge of consumer-owned utilities, federal and state laws governing electric utilities, electric transmission, electric utility regulation, and electric utility finance. The initial board will include the Public Advocate or his or her designee. The Public Advocate may appoint an advisory body to assist the Public Advocate in assuring the representation of customer views of all rate classes. ~~One member must be a residential consumer of electricity, one member must be a representative of a commercial consumer of electricity and one member must be a representative of an industrial consumer of electricity. No more than 5 of the members may be members of the same political party. The Governor shall appoint members as follows:~~

2. Term of office. A member of the initial board serves for a term beginning upon confirmation by the Legislature and terminating when the Legislature approves the plan proposed by the initial board.

~~A. Five members residing in the service territory of the State that was served by the investor-owned transmission and distribution utility serving the largest number of customers in the State on January 1, 2000;~~

~~B. Two members residing in the territory of the State that was served by the investor-owned transmission and distribution utility serving the 2nd largest number of customers in the State on January 1, 2000;~~

~~C. One member residing in the territory of the State that was served by the investor-owned transmission and distribution utility serving the 3rd largest number of customers in the State on January 1, 2000;~~

~~D. One member chosen from a list of at least 2 proposed members provided by an organization representing the consumer-owned transmission and distribution utilities in the State, other than the authority, serving at least 1,000 customers each; and~~

~~E. One member chosen from a list of at least 2 proposed members provided by the executive board of a bona fide labor organization or an association of employees representing at least 10% of the workforce employed by transmission and distribution utilities in the State.~~

~~2. Term of office.—A member of the board serves for a term of 6 years except that members of the first board serve as follows, determined by lot by those members after their appointment: 4 members serve 6-year terms, 3 members serve 4-year terms and 3 members serve 2-year terms. A member serves until the end of the member's term or until the member's successor has been appointed, whichever is later. If there is a vacancy in the board, it must be filled in the same manner described in subsection 1 and the person appointed to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. Members may be reappointed.~~

3. Quorum and chair. Six members of the board constitute a majority and a quorum. The board shall elect from its members a chair and a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

4. Voting. All decisions of the initial board must be made by a majority vote of the board. ~~Members voting in the minority will have the option of appending their views to decisions of the initial board, including on any plan.~~

### § 4003. Powers and duties

1. Powers; generally. The authority is a consumer-owned transmission and distribution utility and the initial board is empowered to produce a plan for the acquisition



of utility property, the operation of the authority, the financing of authority operations, the governance of the Authority, including the composition of the board and the term of office and qualifications of the board members, its direct election by its customers and any other matters relevant to all aspects of the requirements for the full and complete operation of the authority as a consumer-owned utility. When its plan is approved by the Legislature, the authority will exercise~~has~~ all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter. In preparing this plan, the initial board shall take into account the provisions of this chapter and shall consider any relevant report by the Public Utilities Commission, any relevant policies and practices of the Maine Turnpike Authority, the experience of the pre-existing consumer-owned utilities in the state, and public comment, which it shall solicit on its draft plan. This plan must be submitted to the the joint standing committee of the Legislature having jurisdiction over utilities within one year of the date on which members of the initial board assume office.

**2. Limits on authority; generating property.** The authority may not own or operate a generating source or purchase electric capacity or energy from a generating source, except as the commission may approve in order to allow the authority to maintain or improve system reliability.

**3. Operations.** The authority shall contract by means of a competitive public solicitation the services of a qualified nongovernmental entity, referred to in this section as "the contractor," to provide operations and administrative services.

~~**4. Employees.**~~ ~~The employees of the contractor retained to operate the authority's facilities are considered private employees, with all the rights and responsibilities of private employees. The contractor shall hire any person who was an employee of the investor-owned transmission and distribution utility at the time the authority acquired the investor-owned transmission and distribution utility who is a qualified, nonexempt employee subject to collective bargaining agreements of the acquired investor-owned transmission and distribution utility, to the extent of the contractor's need for personnel to provide sound operation, and shall retain these employees for a period of 5 years after first beginning operations. If otherwise qualified, any such employee may not be terminated as a result of the 5 year period expiring. The contractor shall honor and maintain the terms of any collective bargaining agreements in effect at the time the authority acquired the investor-owned transmission and distribution utility for the remaining term of any collective bargaining agreement, except that, when 2 or more contracts exist, the employees' wages, salaries and benefits must be made reasonably equal to the higher of those provided in the contracts or must exceed those previously paid by the acquired investor-owned transmission and distribution utility.~~

~~Upon the conclusion of a contract or a successor pursuant to subsection 3, the authority, in soliciting for a new contract, the authority shall give preference to service providers who agree to maintain or improve the terms of the collective bargaining agreement in existence on the conclusion of the prior contract.~~

~~**5. Acquisition of utility property.**— Within one year of appointment of the first board, the authority shall purchase all utility facilities in the State owned or operated or held for future use by any investor owned transmission and distribution utility, except that the board, by vote of at least 8 members, may extend the period by 12 months. The board may also purchase or assume any other utility property should it determine such an acquisition to be in the interest of its customer owners. The board shall finance the purchase by issuing debt in accordance with chapter 9.~~

~~A. The authority shall pay to the previous franchisee the net book value of the utility facilities and any utility property, as reported in the most recent report prior to the effective date of this chapter by the investor owned transmission and distribution utility to the commission or to the Federal Energy Regulatory Commission, unless the authority and the previous franchisee mutually agree on a different purchase amount.~~

~~B. A final decision of the authority to offer a price for utility facilities and any utility property may be appealed by a previous franchisee to the Law Court in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.~~

~~C. If a final purchase of any utility facilities and any utility property has not been accomplished within one year of the appointment of the first board, or within 12 months after that date if the board extends the date in accordance with this subsection, the authority may take the utility facilities and any utility property by eminent domain in the same manner and under the same conditions as set forth in chapter 65.~~

~~**6. Regional transmission.**— The service territories of the authority initially remain in the transmission system to which they belonged on the effective date of this chapter until changed by majority vote of the board.~~

~~**7. Name.**— The authority may adopt an alternative or abbreviated name for business purposes.~~

~~**8. Consumer owned transmission and distribution utilities; application.**— This subsection controls the treatment of consumer owned transmission and distribution utilities and the application of law to the authority.~~

~~A. This chapter may not be construed to affect the powers, authorities or responsibilities of any consumer owned transmission and distribution utility existing on the effective date of this chapter or created after that date. The authority may not oppose the extension of the service territory of a consumer owned transmission and distribution utility existing prior to the effective date of this chapter to include the entirety of a municipality in which the consumer owned transmission and distribution utility provides electric service as long as the authority is reasonably compensated for the assets and appurtenances required.~~

~~B. Notwithstanding any other provision of this chapter to the contrary, the authority is subject to section 3104; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-A; and section 3214, subsection 2-A.~~

#### **§ 4004. Rates**

The rates and all other charges of the authority must be sufficient to pay in full the cost of service, including the cost of debt and any payments in lieu of taxation. No debt or liability of the authority is a debt or liability of the State or any agency or instrumentality of the State other than the authority, and neither the State nor any agency or instrumentality of the State other than the authority guarantees any debt or liability of the authority.

#### **§ 4005. Tax-exempt; payments in lieu of taxes**

**1. Tax exemptions.** The authority is a public municipal corporation within the meaning and for the purposes of Title 36, section 651, and the property of the authority is exempt from taxation to the extent provided in that section. Notwithstanding any other provision of law, income of the authority, as a public instrumentality, is exempt from all taxation or assessment by the State or any political subdivision of the State.

All bonds, notes and other evidences of indebtedness issued by the authority in accordance with chapter 9 are legal obligations of the authority, and the authority is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section 5701. All bonds, notes and other evidences of indebtedness issued by the authority are legal investments for savings banks in this State and are exempt from state income tax.

**2. Payments in lieu of taxes.** Rates charged by the authority must include sufficient amounts to allow the authority to make payments in lieu of taxes, which shall be part of its cost of service. The authority in accordance with this subsection. The authority, to the extent its revenues exceed current expenditures and any necessary reserves in any fiscal year, shall make payments in lieu of taxes with respect to its utility facilities or property to any municipality, county or other political subdivision to which an investor-owned transmission and distribution utility whose utility facilities the authority acquired pursuant to this chapter paid taxes and in the same amount as those taxes would have been if the investor-owned transmission and distribution utility continued to own the property or utility facilities. If the authority owns and manages a service territory formerly franchised to an investor-owned transmission and distribution utility for at least one month during fiscal year 2019-20 or fiscal year 2020-21, for each such month, the authority also shall make timely payment in lieu of taxes to the State in the amount of 1/12 of the most recent, full year taxes paid to the State by the investor-owned transmission and distribution utility. Such payment to the State must be reduced by any amount paid in lieu of taxes pursuant to this subsection.

#### **§ 4006. Governmental function**

The authority, as a public instrumentality, performs a governmental function in the carrying out of the provisions of this chapter, but no debt or liability of the authority may be considered a debt or liability of the State.

**§ 4007. Termination of the authority**

The authority may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the authority have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt.

**§ 4008. Accountability, transparency and reporting**

The authority is subject to the same standards of governmental review and freedom of access as the Public Utilities Commission. By April 15th of each year ~~after the plan has been approved,~~ the authority shall submit a report to the joint standing committee of the Legislature having jurisdiction over utilities matters summarizing present and future activities and the performance of the authority in meeting its obligations to its ratepayers and employees.

**Sec. 5. Review of laws and report.** The Public Utilities Commission shall examine all laws that may be affected by this Act or need to be changed as a result of this Act, including laws governing the Maine Power Delivery Authority and laws relating to investor-owned transmission and distribution utilities that may be eliminated as a result of this Act. The commission shall determine any modifications to laws that may be necessary or appropriate as a result of this Act or to effectuate the purposes of this Act and shall submit proposed legislation to the Joint Standing Committee on Energy, Utilities and Technology no later than ~~the date the initial board submits the plan. January 15, 2020. The Joint Standing Committee on Energy, Utilities and Technology may report out a bill relating to the subject matter of this Act to the Second Regular Session of the 129th Legislature.~~

**SUMMARY**

This bill creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the State currently operated by the investor-owned transmission and distribution utilities now known as Central Maine Power Company and Emera Maine.